

**Introduced by Senator Wiggins**

February 24, 2009

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An act to repeal and add Section 19525 of the Business and Professions Code, relating to horse racing.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 254, as introduced, Wiggins. Horses: sale, purchase, or transfer.

Existing law prohibits a person from receiving any form of compensation in connection with the sale or purchase of a racehorse, prospective racehorse, stallion, or broodmare, unless the purchaser and seller have agreed in writing to the payment of that compensation.

This bill instead would require any sale, purchase, or transfer of an equine, as defined, to be accompanied by a written bill of sale or acknowledgment of purchase, and a security agreement setting forth the purchase price, and signed by both the purchaser and seller or their duly authorized agents, as specified. The bill would provide that it is unlawful for any person to act as a dual agent, as defined, unless certain conditions are met, and would make it unlawful for a person acting as an agent to receive in excess of \$500 in compensation or in other items of value, related to that transaction, other than from the agent's principal, unless certain conditions are met. The bill would allow any person injured by a violation of its provisions to recover treble damages, plus other expenses. The bill would provide that the board may suspend or revoke the license of any person who violates its provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 19525 of the Business and Professions Code is repealed.

~~19525. No licensee or any other person may receive a commission, fee, gratuity, or any other form of compensation in connection with the sale or purchase of a racehorse, prospective racehorse, stallion, or broodmare, unless the purchaser and seller have agreed in writing to the payment of the commission, fee, gratuity, or other compensation. No contract or agreement shall be enforceable by way of an action or defense unless there is a writing sufficient to indicate that the party against whom enforcement is sought or his or her authorized agent or broker has agreed to the commission, fee, gratuity, or other form of compensation. Anyone who receives a commission, fee, gratuity or any other form of compensation in violation of this section is subject to treble damages to the injured purchaser or seller. The board may suspend or revoke the license of any person who violates this section. Any transfer of an interest in a racehorse, prospective racehorse, stallion, or broodmare shall be accompanied by a written bill of sale setting forth the purchase price.~~

SEC. 2. Section 19525 is added to the Business and Professions Code, to read:

19525. (a) For purposes of this section, “equine” means a horse of any breed used for racing or showing, including prospective racehorses, breeding prospects, stallions, stallion seasons, broodmares, yearlings, or weanlings, or any interest therein.

(b) Any sale, purchase, or transfer of an equine shall be both of the following:

(1) Accompanied by a written bill of sale or acknowledgment of purchase and a security agreement setting forth the purchase price.

(2) Signed by both the purchaser and the seller or their duly authorized agents or, in a transaction solely relating to a season or fractional interest in a stallion, signed by the syndicate manager or stallion manager.

(c) When a transaction described in subdivision (b) is accomplished through a public auction, the bill of sale requirement may be satisfied by the issuance of an auction receipt generated

1 by the auction house and signed by the purchaser or an agent whom  
2 the purchaser has authorized.

3 (d) It is unlawful for a person to act as a “dual agent,” which is  
4 hereby defined as a person acting as an agent for both the purchaser  
5 and the seller, in a transaction involving the sale, purchase, or  
6 transfer of an interest in an equine without the prior knowledge of  
7 both the purchaser and seller, and the written consent of both the  
8 purchaser and seller.

9 (e) It is unlawful for a person acting as an agent for either a  
10 purchaser or a seller or acting as a dual agent in a transaction  
11 involving the sale, purchase, or transfer of an equine to receive in  
12 excess of five hundred dollars (\$500) worth of compensation, fees,  
13 gratuities, or other items of value, related directly or indirectly to  
14 that transaction, from an individual or entity, including any  
15 consigner involved in the transaction, other than the agent’s  
16 principal, unless both of the following occur:

17 (1) The agent receiving the item of value and the individual or  
18 entity giving the item of value disclose the transfer of that item of  
19 value in writing to both the purchaser and seller.

20 (2) The purchaser and seller each consent thereto in writing.

21 (f) Any person acting as an agent for a purchaser or seller or  
22 acting as a dual agent in a transaction involving the sale, purchase,  
23 or transfer of an equine shall, upon request by his or her principal  
24 or principals, provide to the requesters, copies of all financial  
25 records in the possession or control of the agent pertaining to the  
26 transaction. For purposes of this subdivision, financial records  
27 shall not include the agent’s or owner’s work product used to  
28 internally evaluate the equine.

29 (g) Any person injured by a violation of this section shall recover  
30 treble damages from persons or entities violating this section, and  
31 the prevailing party in any litigation under this section shall be  
32 entitled to an award of costs of the suit, reasonable litigation  
33 expenses, and attorney’s fees. As used in this section, treble  
34 damages shall equal three times the sum of both of the following:

35 (1) The difference, if any, between the price paid for the equine  
36 and the actual value of the equine at the time of sale.

37 (2) Any payment made in violation of subdivision (e).

38 (h) No contract or agreement for payment of a commission, fee,  
39 gratuity, or any other form of compensation in connection with

1 any sale, purchase, or transfer of an equine shall be enforceable  
2 by way of an action or defense unless both of the following occur:

3 (1) The contract or agreement is in writing and is signed by the  
4 party against whom enforcement is sought.

5 (2) The recipient of the compensation provides a written bill of  
6 sale or auction receipt for the transaction in accordance with  
7 paragraph (1) of subdivision (b) and subdivision (c) respectively.

8 (i) The board may suspend or revoke the license of any person  
9 who violates this section.

10 (j) Subdivisions (g) and (h) shall not apply to the acts or  
11 omissions of an entity or individual engaged in conducting a public  
12 auction of an equine, or the entity or individual's employees or  
13 agents, if both of the following conditions apply:

14 (1) The acts or omissions of the entity, individual, employee,  
15 or agent are in furtherance of or pursuant to the conduct of the  
16 public auction of an equine.

17 (2) The entity or individual is appropriately licensed or  
18 authorized to conduct that specific public auction by the California  
19 Horse Racing Board and any other governmental entity whose  
20 permission or authorization is required to conduct the auction.